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ABSTRACT

The essay and bibliography presented here are designed for general use among those concerned with questions of campus rights and responsibilities and with the application of legal principles in campus decision-making. The primary focus is on student rights issues. The discussion falls into three parts: (1) "Law and Morality in the Open Society" is concerned with defining the open society and discussing how morality works in this ideal situation. (2) "Legal, Institutional, and Moral Rights" gives specific definitions and examples of these various kinds of rights, concentrating on the academic context. (3) "Guidelines for Administrative Decisions Concerning Students" suggests considering alternative models of student-institutional relationships, developing a campus judiciary system, setting up a list of policy areas to be developed that affect basic rights, preparing for greater involvement with the courts, and improving skills for managing and utilizing conflicts. An annotated bibliography of 181 items covers college law, faculty rights and responsibliities, students in collective bargaining, junior and community college situations, and the legal background. Subject and author indexes and a table of court cases are also appended. (Author/MJK)

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DECISION-MAKING AND THE LAW IN HIGHER EDUCATION-- EMPHASIS ON STUDENT RIGHTS

Essay and Bibliography

Terrence N. Tice

Delta College
University Center, Michigan

July, 1974

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PREFACE

This booklet was prepared in connection with the annual conference of Community College Deans, co-sponsored this year by The League for Innovation in the Community College and Michigan's Delta College, July 22-26, 1974.

The essay and bibliography presented here are designed for general use among those concerned with questions of campus rights and responsibilities and with the application of legal principles in campus decision-making. The primary focus is on student rights issues. As a philosopher, I have discovered that working with the legal issues helps sharpen one's thinking on the moral, political and technical issues. The maturing field of investigation into student rights is particularly apt for this purpose, because it points to fundamental constitutional provisions that are presently gaining enriched interpretation.

I am especially appreciative of the help received from Dr. Ralph W. Banfield, Director of the University of Michigan's Community College Service, and from Dean Ellsworth J. Duguid of Delta College, as well as from the many colleagues here and elsewhere with whom I have discussed these matters.

Terrence N. Tice
Ann Arbor, Michigan
July 1, 1974

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I. ESSAY

INTRODUCTION

The very notion of higher education in a democratic society[1] decrees that college campuses be a protected arena for the free exchange of ideas. Public colleges and universities are particularly susceptible to the push and pull of social forces as they seek to form communities where consent and dissent are alike valued, where individual and minority rights are fostered alongside efforts to exercise leadership and to gain majority agreement. As college campuses open themselves to the winds of change and controversy within the wider society--from the neighborhood to the global setting--administrators gain new forms of responsibility. Traditional administrative roles require reexamination. Retooling is necessary to fit new styles--and values--of "production."[2]

Out of the student protests of the 1960's has emerged a new appreciation of "student rights," some of it engendered or sustained by court action. "Faculty rights" are also in the picture now, partly for similar reasons, partly because the hiring boom of the 1960's is over and the financial squeeze is on, and partly as a result of the rapid growth of collective bargaining in public employment. Words about "management rights" have always been powerfully present in American higher education but are taking on different meanings within the new context.

My aim here is to share some reflections on uses of law in campus decision-making. In doing so, I shall concentrate on questions of "student rights," indeed largely on the legal and philosophical backgrounds of these questions. Students come to college right out of the community those institutions are supposed to serve; almost all are now of voting age; most of them are of "the new generation" coming up; and the courts have recently addressed a sizeable body of consti-

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1. John Dewey's Democracy and Education (New York: Macmillan, 1916; pb. 1966, 378 p.) is still the finest treatise on this general subject, though other related works--Schools for Tomorrow, The Public and its Problems, Individualism Old and New, Liberalism and Social Action, and many others--are more readable.

2. Terry O'Banion (Bibliography #36, p. 659) has argued that overcoming the dominant industrial model of academic production is the major issue facing community colleges in the 1970's. Compare similar concerns within the literature on academic bargaining and the excellent historical study of Raymond E. Callahan, Education and the Cult of Efficiency: A Study of the Social Forces That Have Shaped the Administration of the Public Schools (Chicago: University of Chicago Press, 1962, x, 273 p.).

tutional law to their situation. If these reasons were not enough to lead administrators and faculty and trustees to consider the subject, the increasing possibility of meeting students in court might do the trick for a few. Above all these reasons, there is the matter of "rights," as such, which the changing student scene grants us fresh opportunity to consider.

College law is a complicated and growing field, over which I would not pretend to have an attorney's expertise but present only that of a social philosopher concerned to explore the interface between education and law. In addition to the disciplinary issues that have dominated the literature, there are also important legal aspects of issues regarding financing, student aid, tuition matters, admission policies, segregation, sex discrimination, state systems, state control over private colleges, marketing of term papers, athletics, local voting rights of students, and regulation of campus radio stations--all of which have had some attention in the courts and in the legal periodicals over the past few years.[3] From the student sit-in at Berkeley in 1964 to the closing of several colleges and universities in 1970, attention was largely focussed on student protest and student discipline. Now student leaders, as well as administrators, have a clearer idea of what actions are permitted under law, and they are more likely to work at changing traditional systems from within, if at all. The question of student rights has therefore grown beyond the issues of student discipline.

Meanwhile, experiments with increased student involvement in campus governance continue--moving from the traditional model of participation chiefly as an educational experience to that of power delegated within separate jurisdictions to that of genuine mutual participation with others. At present, student voting is low almost everywhere, mostly ranging from three to thirty percent of the student body. Membership on academic committees is widespread. Here and there students sit on administrative committees as well. The sense of commitment and involvement is nevertheless low. Part of the reason is that, frankly, their elders do not know how to include them effectively within the standard patterns of governance and that faculty are feeling their own pressures, their own relative lack of power. As continuing education becomes a more prominent feature of college life, the presence of older students is beginning to alter this picture. College administration, if not college law, will undoubtedly have to shunt some old habits aside in order to meet the new situation. In the community colleges a special challenge is presented in that many of the students are older, commute, work, and have primary ties outside the college. How can they be helped to feel that they belong to an ongoing community? Are there ways in which they can share responsibility for some aspects of its governance? These types of question are now of the essence.

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3. See Bibliography ##1-4 and the Index. These more specialized subjects are also, in large part, omitted from the Bibliography.

Some students are still early adolescents in mentality. Others are relatively mature and experienced adults. The law covers--but, as we shall see, only barely covers--them all.

Outline

The discussion falls into three parts:

I. Law and Morality in the Open Society
II. Legal, Institutional and Moral Rights
III. Guidelines for Administrative Decisions Concerning Students

Each briefly introduces a distinct yet interlocking area of concern by pointing out some of the major features further inquiry would have to take into account. The essay is also intended to supplement the bibliography that follows. Thus bibliographical items are occasionally referred to by number.

I. LAW AND MORALITY IN THE OPEN SOCIETY

Traditions of academic freedom support the contemporary quest for an open society and are qualified by that quest. For the sake of brevity, an open society may be defined, in largely negative terms, as one in which there is a minimum of secrecy in public affairs and of dishonesty in public communication, a minimum restriction of economic and educational opportunity to any member, a minimum of doctrinaire public policy, and a minimum of political control over social behavior--all consistent with a maximum of social commitment to individual rights.

Like most definitions, this one does not solve any practical problems. It does begin to indicate, however, how complex the major problems we face actually are and to suggest some modes of approaching them. On campus, the notion of an open society presents us with ideals of communal involvement rather than paternalistic, authoritarian rule, ideals of maturing responsibility for and toward individual freedom rather than childish dependence, ideals of shared decision-making, of open, honest and fair dealings with conflict, of seeking each other's good. To make the campus an advance post of the open society entails recognizing that people have immediate self-interests and tend to act on these interests, but it also holds up the expectation that every group of participants will strive for a more mature, rational regard for self and others in their common life. The way ethical values find expression on campus today will undoubtedly have profound effects on leadership styles in tomorrow's society.

Public Problems

What can campus administrators who have come to feel the tremendous force of that connection between today's campus and tomorrow's society do?

Many of the crucial problems we face within our "post-industrial" society arise from the need for a high degree of social organization and political control so that creative new opportunities can open up for the individual, for diverse segments of the society, and for the society as a whole--not only American but worldwide. Yet these complex social and political arrangements also have regressive effects. In microcosm, the same is true on campus. Ironically, reformers are still having to spend their energies on securing basic freedoms by legal and external means--and necessarily so--at the very moment in history when humane survival would seem to depend very largely upon the moral and internal commitments of our leaders. Nowhere, in my view, are the effects more telling than on our college campuses.

The growth of public morality unmistakeably draws from the directives and constraints of law, just as law has in part emerged out of conventional morality and in part protects it. Public morality fails, in my view, as the law becomes the sole determinant of conscience. Suppose, for example, that administrative decisions on campus were made simply on the basis of laws and regulations. This arrangement would tend to support a chiefly prudential, pre-moral way of dealing with problems, because legal conditions can never be sufficiently broad, rational, specific or complex to cover every circumstance. One would be thrown back, again and again, upon questions of competing interests; and one's principal aim would probably be to see to it that a particular set of interests wins. What I am arguing is that although we require the guiding structure of law to compose our affairs, we need morality even more. And here I set store not on proposing a particular set of moral principles but on taking a moral point of view.

When we take the moral context seriously, knowing and using the law takes on greater rather than less significance. Public employment bargaining, for example, is under certain conditions either mandated or permitted by law in several states. In a few of these states, elaborate provisions are made--among other things--to assure that constitutional rights are observed, that practices are fair, and that there is recourse to outside experts when discussions bog down. Well over three hundred institutions of higher education now include faculty and other academic staff in collective bargaining over wages, hours, and other terms and conditions of employment. The laws and regulations governing collective bargaining are essential to its success; however, they can only provide some structure and guidelines for doing this work. They cannot prescribe how relationships will develop across the table or between bargaining sessions. Yet precisely these relationships--conceived especially in moral terms, as I see it--are what make the bargaining work well as a method of utilizing conflict to reach agreement. In this instance, the law serves humane ends (sometimes the law

subverts [illegible]; but it is not enough to assure morally appropriate action.[4]

Two Kinds of Covenant

Two principal ideas of "covenant" had arisen by the twelfth century B.C. in the ancient Near East. Roughly described, one was dictated by the conquerer or king, enforced by coercion, sealed by detailed legalistic instruments or decrees. The other, developed to its high point among the people of Israel, centered on the rule of laws that were very simply and broadly stated (the Decalogue plus a few others). It depended chiefly upon a communal relationship of mutual commitment and trust. Reliance upon the communal type of covenant enabled premonarchical Israel to grow by the tenth century from a few hundred persons escaping bondage in Egypt to a free, diverse and thriving international community, incorporating people out of every conceivable background into its common life. Israel soon experienced the ossifying of communal spirit through dependence on administrative authority and on the ever more detailed letter of the law. Indeed, the dilemma was virtually inescapable, as is now true in our own more complex society: achieve clarity by attending to the letter of the law or attain moral graciousness and trust by grasping the spirit of the law. The way out, I believe, is to let each process qualify the other. Legal clarity achieved without understanding the moral spirit that pervades the basic statements of constitutional rights, for example, becomes an unwholesome burden. Rhetorical subscription to rights without attention to the details tends to subvert those very rights.[5]

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4. I leave aside here the interesting theoretical questions about whether, or to what degree, one may justifiably speak of moral foundations of a legal order or of the morality of law. For a long-term debate over these and related questions, see the articles by H. L. A. Hart and Lon L. Fuller in Society, Law, and Morality, edited by Frederick A. Olafson (Englewood Cliffs, N.J.: Prentice-Hall, 1961), pp. 435-505; also H. L. A. Hart, The Concept of Law (Oxford: At the Clarendon Press, 1961, x, 263 p.) and Lon L. Fuller, The Morality of Law, rev. ed. (New Haven: Yale University Press, 1969, xi, 262 p.).

5. The work of George E. Mendenhall has been particularly helpful to me in considering these relations. See especially his classic study, Law and Covenant in Israel and the Ancient Near East (Pittsburgh: Biblical Colloquium, 1955, 50 p.), where he distinguishes between suzerainty treaties and parity treaties, and The Tenth Generation: The Origins of the Biblical Tradition (Baltimore: Johns Hopkins University Press, 1973, xviii, 248 p.). The special covenental relation of Israel was, of course, also a religious one, to Yahweh. The influence of various religious and pseudo-religious covenants upon the American polity is still not well understood by educators or by legal scholars.

II. LEGAL, INSTITUTIONAL AND MORAL RIGHTS

After articulating a list of basic rights, subsequently further secured by amendments to the U.S. Constitution, the U.S. Bill of Rights states: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people" (Art. IX). It has, in fact, become a generally acknowledged responsibility within public institutions not only (a) not to impede the exercise of certain rights but (b) to promote their recognition, (c) to maintain the necessary conditions that will enable the claims to be met, and (d) to provide opportunity for their further fulfillment. The distinctive character of a public institution is displayed in the mixture of these responses that it offers to valid claims that are or could be placed upon its services.

Student Rights

What rights? What is meant by "a right" in this context? On the campus scene, the term "student rights" means several things, and all are important. It means (a) constitutional and other legal rights, (b) rights to participation within the institution, and (c) human rights. Sometimes it also means (d) the supposed right to special consideration "as an individual person," which transcends even the high moral claim attached to human rights and which may not, in the strict sense, be a right at all but a license or privilege. Not surprisingly, these categories are often misunderstood, confused and conflated by persons on all sides. Well they might be, for the subject of rights is extremely complicated and fuzzy, and it is difficult to think about.

To help clarify what some of the major practical issues concerning student rights may be, I shall make several statements about "rights" and offer brief explanations. Every one of these statements is open to objections, which cannot be met here; but they do reflect the well-considered investigations of many contemporary philosophers and legal scholars and, I believe, present a cohesive, workable position.[6]

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6. I can only offer broad brush strokes in this context. At several points, I have drawn from Joel Feinberg's outstanding account in his Social Philosophy (Englewood Cliffs, N.J.: Prentice-Hall, 1973, xii, 126 p.). Papers by William K. Frankena and Gregory Vlastos in Social Justice, within a fine set of essays edited by Richard B. Brandt (Englewood Cliffs, N.J.: Prentice-Hall, 1962, vi, 169 p.), are also helpful in clarifying the concept of a "right." In most respects, though by no means all, my own account squares with those of Feinberg, Frankena and Vlastos. I am not sure whether any of them would wholly accept my notion of levels.

Rights

1. A "right," in the strict sense that has probably derived from legal systems but applies in other contexts as well, is a valid claim upon others that entails the liberty either to act or not to act, to be treated or not to be treated, in some particular way, given the requisite ability and opportunity. The "others" may be particular individuals, groups, members or representatives of society, or all human beings (including oneself).

2. One useful distinction of rights that cuts across the categories already drawn is that between positive rights--rights to other persons' positive actions--and negative rights--rights to other persons' omissions or forebearances. Usually positive rights relate to specific persons or agencies (in personam rights), while negative rights relate to anyone who might come along (in rem rights). Due process rights, for example, are, for the most part, positive and in personam rights. Rights against interference with free speech or against search and seizure are, for the most part, negative and in rem rights. For an administrator to throw up his hands against a negative rights claim and say, with feigned hopelessness, "What can I do?" may be inappropriate in that what he is really being asked is to refrain from customary behavior, not to do but at most to undo. That is, his response would be formally proper but would not suitably address the claim. This kind of response is maddening to students who are already upset by what they regard to be unjust action or neglect.

3. One may have claims that are important in terms of human relationships but cannot qualify as rights because they are not valid claims. That is, they do not yet count as grounds for any specific obligation of others toward oneself. At the very most, in such instances, one has the separate right to consideration but not the right to have one's specific claim met. In some counseling situations where a student is found to be quite ambivalent toward the institution, it might be useful to point out that he is at the same time asking it to meet his valid general claims as an adult citizen and wanting it to meet claims in a parental and institutionally invalid way. He might conceivably have it both ways, but he may also be helped by understanding the difference.

Moral Rights--Human Rights

4. Conceivably, some rights are so specifically stated within a code that no exception could possibly be made to their claims. In this case, the right would be absolute, by definition. Some have held that human rights are absolute. My own view is that they are all prima facie rights, not absolute; but this does not detract from their immense moral authority as ideal directives. A human right is accorded to an individual simply by virtue of the fact that he is a human being and in the light of some value or values placed upon human existence. (Some have chosen the capacity to reason and/or to suffer and enjoy as the

defining values, others more abstract values such as "well-being" and "freedom"; still others have instead pointed to an ultimate attitude of respect not grounded in any other value--an approach I prefer because it seems to present fewer difficulties than the others do.)

5. Human rights are among the moral rights. Moral rights are not only valid claims but must be justified with respect to right-making principles that are appropriate to the moral context. (The latter qualification leaves open the possibility that some of these right-making principles will themselves be moral and some non-moral, e.g. aesthetic.) A person is moral or acts morally in his capacity as a human being, as a person in relation with another person or persons, as a person in a particular social relation or context, or as a person in a position of responsibility within the body politic--sometimes in all four capacities almost simultaneously. The moral context, in my view, includes all four levels of rights and obligations, and all degrees inbetween. Thus, a person may have moral obligations to himself as a singular and unique individual and quite apart from merely prudential considerations. This view further implies that political contexts, whatever else they may hold, normally have moral elements within them and are not to be totally separated from moral contexts in the defining of rights and obligations.

6. Historically, an interesting thing has happened with the conception of human rights. As societies have grown more affluent and complex (and there are probably other important variables too), lists of human rights appearing in official documents have gotten longer and more specific; in emphasis they have climbed progressively up the scale from personal to interpersonal to social to political relations. Two United Nations documents--the 1948 "Universal Declaration of Human Rights" and the 1959 "Declaration of the Rights of the Child"--are the preeminent examples of this progression in our own time. More recent statements of rights involving students, faculty, administrators and trustees bear similar qualities.[7]

In short, the scope of moral obligations that are enjoined as ideals for all, beyond individual discretion, has grown enormously. The "Universal Declaration" movingly presents its list as "a common standard of achievement" and claims that "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." The declaration further holds it to be "essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law" (emphasis added). This is the broadening moral atmosphere within which issues of "student rights" emerged in the 1960's, in the midst of the Vietnam War. In attempting to do something about it, the students tend to be ahead of the rest of us, though some few faculty members, administrators and trustees have been correspondingly responsive.

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7. See McInnes, Bibliography #35, for example, and the Index.

Legal Rights

7. What are "legal rights," then? And how can "the rule of law" help to protect human rights and other moral rights on campus? Legal rights are a class of claim-rights, as defined above, that are recognized or conferred by the state. Often, though not always, some valid means of coercion or constraint are attached to encourage, induce, or otherwise lead to compliance, and often penalties are attached for noncompliance. Legal rights do not necessarily contain moral considerations or moral force; but they may do so and may be regarded as such. Under a rule of law, some liberties are to be curtailed so that others may be attained, but not arbitrarily or maliciously or irrationally. Reference must always be made to the law itself. I would hold that unless one seeks overall to fulfill the law morally and with highest respect not for what one can "get away with" under the law but for what one can "best achieve" through the law, one tends to subvert the rule of law. College administrators are often extraordinarily free to choose the one way or the other--as students, faculty, and administrators themselves are sometimes painfully aware.

Only a small proportion of the interactions between people in a society or within an institution can normally be directly covered by the law, or perhaps should be. Thus, to restrict "student rights" to "legal rights" is to deal with a relatively small, albeit important, part of what is at issue concerning student-institutional relations. For the most part, the rule of law provides a framework within which humans may pursue moral and other significant ends.

Institutional Rights

8. Institutional rights are those specifically referred to the purposes, rules and regulations of an institution. They are like legal rights in every other respect and may include legal rights within their number. Sometimes a legal or institutional right is not interpreted or stated in such a way that one can tell what it entails or whether it conflicts with another such right or not. For example, "the right to an education" is a very broad statement, one on which it is difficult to get an agreed reading. If we ask what other rights within a college it might conflict with, the answer does not exactly come forth with a rush. The "right to inspect one's file" is specific and is therefore easier to compare with any possibly conflicting rights. The "right to a hearing in face of suspension" actually comprises several specific procedural due process rights and possibly some general ones as well. The "right to participate in student elections" is a discretionary right, because the student is not obligated to act upon his right. If, however, the college does not provide any significant issues or responsibilities for students to have elections about, abrogation of a more nearly fundamental right may be implied, even though elections are permitted.

9. A legal system generally develops by adjusting conflicting claims through more specific statements or procedures. The same would be true of a rational institutional system. This process does not imply that the rules will get increasingly narrower or that the procedures will become more rule-bound. To permit co-ed dorms, for instance, is not less specific than to prohibit them; in fact, it extends the boundaries of claims that can be made with respect to living arrangements. This example displays the broadening, enabling, liberating aspect of juridical principles. With further experience, however, exceptions are inevitably called for, either to protect the meaning of the right or to extend it or substantively to alter it. If this sophisticating process does not occur with housing regulations on a particular campus, it will likely emerge in other areas, e.g. where sex discrimination has become an issue.

The Academic Context

10. Nearly all the "student rights" decisions that have emerged in the courts, in the face of conflicting claims, have dealt with procedural rather than substantive rights. Apart from matters regarding free speech, privacy, the right to control one's own personal appearance (e.g. wear long hair), and the right to hear outside speakers, substantive issues have been difficult to adjudicate off campus.

Indeed, the courts are rightly reluctant to interfere in matters that fall within the domain of academic judgment, even where these matters might intersect with other interests of the state. Such reticence, for example, has been so far markedly evident with respect to faculty grievance cases where the state provides for arbitration. I would expect the same to be true as students and others seek outside judgment on their campus grievances. This assessment is somewhat in the nature of a hope rather than a firm prediction, however, because as more specific criteria emerge regarding what does or does not constitute academic judgment, there is a real possibility that legal provisions might get more specific and directive than is healthful. Higher education institutions could readily bring about this state of affairs by failing to handle conflicting claims in the open, collegial and conciliatory manner appropriate to academic settings.

III. GUIDELINES FOR ADMINISTRATIVE DECISIONS CONCERNING STUDENTS

Undoubtedly there will be more interaction between court and campus in the years ahead. Much can be gained from this process that will aid the development of campus governance. On the other hand, judicial restraint with respect to many areas of college life should also encourage academics to put their own house in order. In Goldberg

v. Regents of University of California[8] the court stated:

> Historically, the academic community has been unique in having its own standards, rewards, and punishments. Its members have been allowed to go about their business of teaching and learning largely free of outside interference. To compel such a community to recognize and enforce precisely the same standards and penalties that prevail in the broader social community would serve neither the special needs and interests of the educational institutions, nor the ultimate advantages that society derives therefrom. Thus, in an academic community, greater freedoms and greater restrictions may prevail than in society at large, and the subtle fixing of these limits should, in a large measure, be left to the educational institution itself.

Detailed guidelines for campus reform can be gleaned from the legally oriented literature and from official statements on the rights of students and others within the campus community.[9] My own primary recommendation, in fact, is that administrators and other interested persons find some organized way to familiarize themselves with such guidelines, which can at best be only alluded to here.

Gradually the judicial contribution is building up through case law. Equally important contributions are coming from independent efforts on campus. In these few pages, I borrow from both sectors in order to formulate a few general recommendations. In doing so, I am far more interested in stimulating further inquiry among campus practitioners than in persuading anyone to pursue some specific action, though I do not hesitate to reveal my own beliefs. Here, then, are some recommendations as to what might advance rational and appropriate administrative decision-making concerning students.

1. Consider alternative models of student-institutional relationships. (a) The classical in loco parentis doctrine has been dying in the courts, to be replaced largely, though not exclusively, by a constitutional approach. It is worth considering to what degree undesirable remnants remain on campus, and to what degree effective guidance and counseling has been sadly, mistakenly thrown out, as I believe, with the desirable relaxation of parental functions. The

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8. 57 Cal. R. 463, 1967.

9. Much of the literature cited in the Bibliography contains such guidelines, which can be pulled together through the Index. Among the more general summaries, Dale Gaddy's judicial guidelines on dealing with student activism for the junior college administrator are especially well stated (#24), as are various chapters in Law and Discipline, edited by Grace Holmes (#64). See Index under Student rights for statements, of which perhaps the most important is the 1967 "Joint Statement on Rights and Responsibilities of Students" (the text is reprinted in #51).

(b) contractual and (c) fiduciary relationships find their place within case law, particularly but not exclusively in relation to private colleges. Examining these possibilities in the light of basic educational goals and functions could enable administrators to help develop new programs and to form safeguards against turning academic process into an uncontrolled and impersonal commercial venture. In colloquial terms, two excesses also appear here that seem for the most part out of place within a genuinely academic setting: "the piper calls the tune" and "you pay your money and take your choice." (d) The constitutional approach is predominant within the courts. The student is regarded as a citizen, with full rights on and off campus. (e) The communal or joint-participatory approach is one that is so far suggested only through more ideal and indirect language in court opinions and that is most up to the institutions themselves. In my view, this is the only context within which problems that arise with the other approaches can be adequately and appropriately dealt with on campus, allowing the virtues of each to complement each other.

2. Consider which governance patterns are more or less appropriate for student involvement and in what respects. Richard C. Richardson's distinctions between involvements in day-to-day management, policy formulations, and review of administrative action are particularly apt for this purpose.[10] These opportunities should be made explicit. Efforts should be put into their advancement just as commitedly as those devoted to fiscal, program, and planning concerns.

3. Gain awareness of procedural distinctions that have developed within judicial experience and that might be applied, with some modification, to administrative practice. For example, a sensitive approach to student affairs could well benefit from an understanding of when to apply formal or informal procedures, i.e. those under specific rules and those more open to interpersonal exploration of issues. It would be useful to have in mind which kinds of offenses are matters for campus tribunals or for the civil or criminal courts (and, if so, what further responsibility can be undertaken for bail[11] and other services). At the same time, such awareness might help to achieve a less elaborate set of disciplinary procedures on campus, with educational and communal aims built in, particularly to avoid establishing a severe, acrimonious criminal-type proceeding. Some grasp of the uses that can be made of questionary proceedings, as are employed in regulatory commissions, as opposed to the adversary proceedings used in the criminal courts, would also save much heartache.[12] Efforts should further be made to avoid double jeopardy, which requires understanding when judiciary action, both on and off campus, would be appropriate and when it would not be.

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10. See Bibliography #28 and other items by Richardson.

11. See Pettigrew, Bibliography #155.

12. See Karlesky, Bibliography #34, for a brief discussion of legal models.

4. When stated standards and policies must be relied upon, make them explicit and available--again, under the condition of communal involvement in their formulation, review, and change, where appropriate and feasible. The courts have already provided some criteria that would aid in avoiding discrimination, vagueness and overbreadth in such statements. One would also do well to consider when rules and regulations tend to be a disservice, notably when they are thought to supplant rather than to enhance and support morally-informed relationships.

5. Develop a campus judiciary system, formal and informal, that provides for procedural rights. In discipline cases, the courts have dwelt upon such features as specificity of rules, notice of charges, provision of a hearing, representation by counsel, confrontation and cross-examination of witnesses, selection of the panel, exclusion of certain evidence, written record, and appeal--all richly detailed in the literature.[13] The ombudsman process is an excellent one for combining formal protections with informal values and for averting the need for more costly proceedings.[14]

6. Set up a list of policy areas to be developed that affect the more substantive rights--e.g. first amendment rights of free speech, free press, demonstration and dissent, hearing outside speakers; political and extracurricular activities; personal privacy and freedom, such as relate to living arrangements, personal appearance, pregnancy, confidentiality of records; and student employment. If such policy-making is approached with the aim of enabling action rather than simply of restricting action, this will be within the spirit, as opposed to the dead letter, of constitutional law.

7. Prepare for greater involvement with the courts. This is hard to predict; but there are signs.[15] Counsel should be trained both to draw upon college law and to appreciate the special circumstances of academic life.

8. Lobby against legislative invasions of campus affairs, such as appeared during the height of student protest, notably through aid restrictions.[16]

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13. The University of Michigan, for example, has recently formed a tripartite rule-making, panel-appointing University Council and a set of rules and procedures for a University Judiciary, which hears cases affecting faculty and administrators as well as students. This elaborate and thoughtful scheme was approved by student and faculty government, the administration, and the board of regents.

14. See Bibliography, ##30, 37, and 79.

15. Robert O'Neil predicts a wide range of involvement with the courts, Bibliography #47.

16. See Index, Legislative responses to campus unrest.

9. Consider the number of roads that are being traveled toward greater student involvement in campus decision-making and their possible relations to each other. For example: use of student attorneys, work-study grants for leadership training, credit through independent study courses for critically examined experience in campus governance, student-run services (this may well increase very rapidly[17]), improved student evaluation of teachers, student representation on boards of trustees.

10. Perhaps most important of all, improve skills for managing and utilizing conflict.[18] If anything from legal experience is eminently applicable to campus situations, it is the necessity and ability to deal with conflict. The court alone, however, will not adequately instruct the campus as to what may or must be done. For that purpose, the campus has its own contribution to make.

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17. See Wise, Bibliography #48.

18. See Feltner and Goodsell on "The Academic Dean and Conflict Management" (Bibliography #43) and Index.

II. BIBLIOGRAPHY

Although student rights and responsibilities are closely intertwined with those of administrators, faculty, and other college staff, the discussions that view the student situation from a legal standpoint are so far almost completely separate from those that treat the other aspects.

Only the student aspect is surveyed here, in a nearly exhaustive listing of the important items. I have already provided bibliographies on faculty bargaining and governance in recent publications (##8-10 below). At this time, the situations of non-academic staff require separate treatment, as does the relation of all these factors to the sociopolitical environment of higher education today. Works that consider only children's rights or the public school setting are also excluded, though several items refer to them. Other studies that deal with student protest and student participation in governance but not from a legal standpoint are likewise omitted, except for a brief section on community and junior college affairs.

The listings are presented in the following outline--in Parts II and III alphabetically within each year:

I. Basic Resources

- A. College Law
- B. Faculty Rights and Responsibilities
- C. Students in Collective Bargaining

II. Junior and Community College Situations

- A. Books
- B. Articles

III. The Legal Background

- A. Books
- B. Articles

The index, in effect, provides several mini-bibliographies, referring to the items by number. An asterisk (*) appears by forty-five items judged to be especially valuable for use by non-specialists or for general reference purposes.

I. BASIC RESOURCES

A. College Law

Several books listed in Part III are standard in this field. Sections I.B-C refer to still other general resources.

In addition to the four periodicals noted below, the following are also useful: Arbitration in the Schools, Change, Community and Junior College Journal (formerly Junior College Journal), Community College Review, Intellect (formerly School and Society), Journal of the College and University Personnel Association, and Journal of Higher Education.

The law reviews remain the chief resource for case reports and new interpretations, along with the standard legal digests and indexes.

1. College Law Digest (1970-). National Association of College and University Attorneys bimonthly digest of cases. Suite 510, One Dupont Circle, Washington, D.C. 20036.

2. College Law Bulletin (1968-). A United States National Student Association monthly, appearing ten times per year. Major court decisions, legislation, documents, and publications of interest on student and faculty rights. 2115 S St., N.W., Washington, D.C. 20008.

3. Journal of College and University Law (1973-). Formerly College Counsel; a quarterly published by the National Association of College and University Attorneys (see #1 above).

4. Journal of Law and Education (1972-). A quarterly, mostly on public school matters. 728 National Press Building, Washington, D.C. 20004.

B. Faculty Rights and Responsibilities

Interest in faculty power has followed on the heels of the student power controversies of the late 1960's. A considerable literature has resulted. General and legal material that relates especially to faculty bargaining and governance I have listed in the extensive annotated bibliographies in Faculty Power and in Faculty Bargaining in the Seventies and in a more select annotated bibliography (##8-10). Reference to literature on non-faculty staff members is also made in these volumes. The other books listed are among the best in this rapidly expanding field of study.

5. Carr, Robert K., and Daniel K. Van Eyck. Collective Bargaining Comes to the Campus. Washington, D.C.: American Council on Education, 1973. xii, 314 p.

6. Duryea, E.D., Robert S. Fisk, and Associates. Faculty Unions and Collective Bargaining. San Francisco: Jossey-Bass, 1973. xvi, 236 p.

7. Ladd, Everett Carll, Jr., and Seymour Martin Lipset. Professors, Unions, and American Higher Education. Berkeley, Calif.: The Carnegie Commission on Higher Education, 1973. xi, 124 p.

8. Tice, Terrence N. Resources on Academic Bargaining and Governance. Washington, D.C.: ERIC Clearinghouse on Higher Education, 1974. 42 p.

Prepared in cooperation with Academic Collective Bargaining Information Service, 1818 R St. N.W., Washington, D.C. 20009. Contents: I. Agencies, Bibliographies, Periodicals and other Basic Resources; II. Public Employment Bargaining: Labor Law and Practice; III. Collective Bargaining and Governance in Higher Education; Indexes.

9. Tice, Terrence N., ed. Faculty Power: Collective Bargaining on Campus. Ann Arbor, Michigan: The Institute of Continuing Legal Education, 1972. xvii, 368 p.

10. Tice, Terrence N., ed. Faculty Bargaining in the Seventies. Ann Arbor, Michigan: The Institute of Continuing Legal Education, 1973. xvii, 408 p.

C. Students in Collective Bargaining

11. Bucklew, Neil S. "Unionized Students on Campus." Educational Record 54, no. 4 (Fall 1973), 299-307.

Also see his Students and Unions (Pennsylvania State University, Center for the Study of Higher Education, Report no. 22, July 1973, 15 p.).

12. McHugh, William F. "Collective Bargaining and the College Student." Journal of Higher Education 42, no. 3 (March 1971), 175-185.

13. Najita, Joyce M. "Collective Bargaining in the Public Sector: Unit Determinations Involving University Graduate Assistants." IRC Reports (Honolulu: Industrial Relations Center, February 1972). 8 p.

14. O'Connor, David F. P. "Student-Employees and Collective Bargaining under the National Labor Relations Act: An Alternative to Violence on American College Campuses." George Washington Law Review 38, no. 5 (July 1970), 1026-1050.

15. Semas, Philip W. "National Student Association to Press for Role as Union." Chronicle of Higher Education 7, no. 42 (September 10, 1973), p. 4.

16. Shark, Alan. "A Student's Collective Thought on Bargaining." Journal of Higher Education 43, no. 7 (October 1972), 552-558.

17. Shark, Alan. "The Students' Right to Collective Bargaining." Change 5, no. 3 (April 1973), 9-10, 62.

18. Wax, Harvey I. "The 'Student Employee' at the University," 19-26. In Labor Relations in Higher Education. New York: Practising Law Institute, Course Handbook Series no. 47, November-December 1972.

19. Wisconsin Law Review 1971, no. 1. Symposium: "Collective Negotiations in Higher Education."

    Includes detailed discussion of the Teaching Assistants Association, which gained status as a bargaining agent by recognition at the University of Wisconsin. In 1974, the Graduate Assistants Organization at the University of Michigan achieved the same status.

II. COMMUNITY AND JUNIOR COLLEGE SITUATIONS

The following is a selection of a few books and some particularly relevant articles. Since the special situations of community and junior colleges have been largely ignored in the general discussion of campus rights, and since many of the issues are only now rising to prominence among those institutions, the listing is necessarily short. Nonetheless, it contains material worth the attention of those chiefly interested in other higher education contexts. Junior and community colleges are forced to face fundamental issues regarding relations to the wider community that some colleges can, unhappily, avoid or postpone at this time.

A. Books

1970

20. Carnegie Commission on Higher Education. The Open-Door Colleges: Policies for Community Colleges. New York: McGraw-Hill, 1970. x, 72 p.

    A special report and recommendations, preliminary to the final report of 1972.

1971

21. Cohen, Arthur M., et al. A Constant Variable: New Perspectives on the Community College. San Francisco: Jossey-Bass, 1971. xvi, 238 p.

22. Medsker, Leland L., and Dale Tillery. Breaking the Access Barriers: A Profile of the Two-Year Colleges. New York: McGraw-Hill, 1971. x, 183 p.

    The profile succinctly presented in this Carnegie Commission study includes projections and recommendations for the future. Commentary by Joseph P. Cosand, 155-161.

23. Moore, William, Jr. Blind Man on a Freeway: The Community College Administrator. San Francisco: Jossey-Bass, 1971. xvi, 173 p.

1972

*24. The Carnegie Commission on Higher Education. A Digest and Index of Reports and Recommendations, December 1968 - June 1972. Berkeley, California: Carnegie Commission on Higher Education, 1972. 191 p.

The Commission, which began its work in 1967, has published numerous studies and reports. Some are yet to be published in 1974. A briefer guide is presented in Change 5, no. 9 (November 1973), with critiques by Norman Birnbaum and W. Roy Niblett. Also see Lewis B. Mayhew, The Carnegie Commission on Higher Education: A Critical Analysis of the Reports and Recommendations (San Francisco: Jossey-Bass, 1973) and chapters 1-4 in W. Vermilye Dyckman, ed., The Expanded Campus, Current Issues in Higher Education 27 (San Francisco: Jossey-Bass, 1972).

*25. Monroe, Charles R. Profile of the Community College: A Handbook. San Francisco: Jossey-Bass, 1972. xiv, 435 p.

A comprehensive treatment, drawn from forty years of experience and study.

26. O'Banion, Terry, and Alice Thurston, eds. Student Development Programs in the Community Junior College. Englewood Cliffs, N.J.: Prentice-Hall, 1972. xi, 235 p.

A thorough coverage of the subject. See especially Richard C. Richardson, Jr., "The Student's Role in the Affairs of the College," 51-67. Compare Terry O'Banion, Teachers for Tomorrow: Staff Development in the Community-Junior Colleges (Tucson: University of Arizona Press, 1972, vii, 185 p.).

1973

*27. Richardson, Richard C., Jr., Clyde E. Blocker, and Louis W. Bender. Governance for the Two-Year College. San Francisco: Jossey-Bass, 1973. ix, 245 p.

B. Articles

1969

*28. Richardson, Richard C., Jr. "Recommendations on Student Rights and Freedoms." Junior College Journal 39, no. 5 (February 1969), 34-36, 38, 40, 42, 44.

A thoughtful statement by one of the foremost students of these issues, listing areas of student involvements, rights and responsibilities appropriate to (1) management of the institution, (2) policy formulation, and (3) review of administrative action.

1970

*29. Deegan, William L., Karl O. Drexel, John T. Collins, and Dorothy L. Kearney. "Student Participation in Governance." Junior College Journal 41, no. 3 (November 1970), 15-22.

Examination of several models: traditional, separate jurisdictional, both rejected; and alternative participatory models (Schoben's bicameral, Richardson's areas of responsibility, and the all-college senate models).

30. London, Herbert. "Underground Notes from a Campus Ombudsman." Journal of Higher Education 41, no. 5 (May 1970), 350-364.

Personal testimony from an ombudsman for student grievances at New York University.

Richardson, Richard C., Jr. "Needed: New Directions in Administration." Junior College Journal 40, no. 6 (March 1970), 16-22.

Experimental modes of administrative coordination and problem-solving, with detailed organization charts showing the use of a modified functional administration model versus line and staff types. See response in vol. 41, no. 5 (February 1971) by Charles A. Atwell and J. Foster Watkins, "New Directions for Administration--But for Different Reasons," 17-19, drawing their rationale for broader participation in governance from organizational behavior studies.

1971

32. Collins, Charles C. "A Redefined Board for a Redefined Community." Junior College Journal 41, no. 6 (March 1971), 100, 102, 104, 106.

Argues for representation on boards more nearly proportional to the make-up of the several sub-communities of the college, including students, faculty and administration, with a minority of publically elected members. See Mary Lou Zoglin's opposing response, "Elect the Board from the Community," in vol. 42, no. 7 (April 1972), 21-23; by the president of California's De Anza College board.

33. Ikenberry, Stanley O. "Governance and the Faculty." Junior College Journal 42, no. 3 (November 1971), 12-15.

Continuing trends for the 1970's: (1) demise of the academic mystique through outside criticisms, (2) decline in administrative autonomy, (3) increased standardization of governance procedures and codes, (4) greater need for conflict recognition and management, (5) greater decentralization, (6) challenges to academic professionalism. Several implications are considered.

*34. Karlesky, Joseph J., and D. Grier Stephenson, Jr. "Student Disciplinary Proceedings: Some Preliminary Questions." Journal of Higher Education 42, no. 8 (November 1971), 648-656.

Important distinctions are drawn between adversary and questionary proceedings, formal and informal approaches, academic and non-academic offenses, and matters appropriate to campus tribunals versus the civil or criminal courts.

35. McInnes, William C., S.J. "A Statement of Rights for College Administrators." Journal of Higher Education 42, no. 5 (May 1971), 374-386.

The statement is explained and placed in the context of official statements regarding faculty, student and administrative rights. Lewis B. Mayhew responds: "Thoughts on 'A Statement of Rights for College Administrators'," id., 387-391.

36. O'Banion, Terry. "Humanizing Education in the Community College." Journal of Higher Education 42, no. 8 (November 71), 667-668.

See his 1972 books. He regards the move away from the production model to the humanistic model the most fundamental issue for community colleges in the 1970's.

37. Pesci, Frank B. "The Ombudsman Concept in the Two-Year College." Junior College Journal 41, no. 8 (May 1971), 30, 32.

Report of a 1969-1970 survey of 177 public two-year colleges in 30 states, three-fourths of those with enrollments of 2,000 and over responding. Thirteen reported having a campus ombudsman. Only 35 had studied the concept.

*38. Peterson, Marvin W. "Decentralization: A Strategic Approach." Journal of Higher Education 42, no. 6 (June 1971), 521-539.

Some practical strategies and dilemmas are outlined in terms of organization theory. See "Comment by W. Max Wise," id., 540-542.

39. Richardson, Richard C., Jr. "Restructuring in Human Dimensions of Our Colleges." Junior College Journal 41, no. 5 (February 1971), 20-24.

"Accountability" within a "participatory" scheme.

1972

40. Davis, Esther R. "Eight Safe Campuses." Junior College Journal 42, no. 6 (March 1972), 44-47.

Police presence in the eight Los Angeles community colleges.

41. Deegan, William L. "Students and Governance: Where Are We? Where Are We Going?" Junior College Journal 42, no. 5 (February 1972), 38-43, 46, 48, 50.

    Report of a 1970 study of 85 among California's 92 public junior colleges, with general recommendations.

42. Deegan, William L. "Should Students Evaluate Faculty?" Community and Junior College Journal 43, no. 2 (October 1972), 25-26.

    Outline of current problems uncovered by research, of ways to help students become more competent observers and of exchanging information.

*43. Feltner, Bill D., and David R. Goodsell. "The Academic Dean and Conflict Management." Journal of Higher Education 43, no. 9 (December 1972), 692-701.

    Informed discussion of changing roles for deans, of proven effectiveness of confrontation methods for dealing with conflict, and of recommended ways to serve as a leader in problem-solving--as initiator, defendant, and conciliator. Compare the excellent article by David W. Leslie in the same issue, 702-719: "Conflict Management in the Academy: An Exploration of the Issues."

44. Smith, Albert B. "Department Chairmen: Neither Fish nor Fowl." Junior College Journal 42, no. 6 (March 1972), 40-43.

    A detailed study of roles perceptions in twelve Michigan community colleges, report from his 1970 University of Michigan dissertation.

1973

45. Canavan, Francis. "The Process That Is Due." Journal of Higher Education 44, no. 2 (February 1973), 114-123.

    Questions are raised regarding purposes, results, protection, and institutional context related to "due process"; tenure and student discipline are used as examples.

46. Galis, Leon. "The Democratic Case Against the Democratic College." Journal of Higher Education 44, no. 9 (December 1973), 716-729.

*47. O'Neil, Robert M. "Colleges and the Courts: A Peacetime Perspective." Liberal Education 59, no. 2 (May 1973), 176-186.

    Some hypotheses about the future of legal involvements in higher education by an experienced legal observer.

*48. Wise, W. Max. "The Student Corporation: A New Prospect for American Colleges and Universities." Journal of Higher Education 44, no. 1 (January 1973), 27-40.

    Excellent survey of possibilities and constraints in the rise of student corporations for student services.

III. THE LEGAL BACKGROUND

A. Books

1961

49. Blackwell, Thomas E. College Law: A Guide for Administrators. Washington, D.C.: American Council on Education, 1961. 347 p.

A standard work. See his 1971 updating articles (#135) and his 1974 book (#76), continued through the bimonthly College Law Digest, which he edits.

1968

50. Blair, James W., Jr., ed. ASG Series in Student Rights and Responsibilities, vol. 1. Cincinnati, Ohio: The Associated Student Governments of America, 1968. ix, 309 p.

1969

*51. Holmes, Grace W., ed. Student Protest and the Law. Ann Arbor, Michigan: Institute of Continuing Legal Education, 1969. 403 p.

This and the companion volume of 1971 are the standard works in the field. Contents: Robben W. Fleming, "Introductory Remarks," 3-7; Part I: "Symposium: The Challenge to the University": Paul D. Carrington, Richard L. Cates, Robert L. Knauss, Marvin Niehuss, 9-49; Part II: "Community, Student, University": James T. Mooney, "Unrest on Campus," 53-66; Tom J. Farer, "The Array of Sanctions," 67-81; John P. Holloway, "The School in Court," 83-103; Richard A. Lippe, "The Student in Court," 105-130; Edward C. Kalaidjian, "Problems of Dual Jurisdiction of Campus and Community," 131-148; "Panel Discussion," 149-167; Part III: "Constitutional Considerations": William M. Beaney, "How Private are Private Institutions of Higher Education?" 171-179; William W. Van Alstyne, "The Constitutional Protection of Protest on Campus," 181-200; "Panel Discussion," 201-209. Appendixes: "Joint Statement on Rights and Freedoms of Students," 213-224; "Judicial Standards of Procedure in Review of Student Discipline," 225-246; "Rules of the Board of Higher Education of the City of New York," 247-252; "Columbia University Interim Rules Relating to Rallies, Picketing and Other Mass Demonstrations," 253-268; "Order Granting a Permanent Injunction," 269-278; "Summons and Complaint for Permanent Injunction," 279-298; "Complaint, Order to Show Cause and Contempt Citation," 299-314; "Order Granting Injunction," 315-326; "Model Code for Student Rights, Responsibilities and Conduct," 327-362; Bibliography, Table of Cases, Index, 363-403.

52. Practising Law Institute. The Campus Crisis: Legal Problems of University Discipline, Administration and Expansion. New York: Practising Law Institute, 1969. 224 p.

Useful outlines and texts. Note especially Dale Gaddy's discussion for the junior college administrator. Contents: Roy Lucas, "Stu-

dent Rights and Responsibilities," 17-81; "ACLU Statement on Campus Disorders," 81-88; "NASPA Statement on Student Power," 89-96; Robert L. Carter, "The University and the Racial Crisis," 97-104; Robert F. Drinan, "Governments, Solutions - Federal and State Legislation Regarding Aid to Students," 105-114; Dale Gaddy, "Student Activism and the Junior College Administrator: Judicial Guidelines," 115-164; "First Amendment Freedoms: Tinker v. Des Moines Independent Community School District (Text)," 165-190; "Use of Facilities: Snyder v. Board of Trustees of the University of Illinois (Text)," 191-200; "Standards of Conduct: Soglin v. Kauffman (Text)," 201-218.

1970

53. American Bar Association. Report of the American Bar Association Committee on Campus Government and Student Dissent. Chicago: American Bar Foundation, 1970. 36 p.

    The A.B.A.'s Committee on Student Rights and Responsibilities, Law Student Division, also issued Model Code for Student Rights, Responsibilities, and Conduct in 1969.

54. American Civil Liberties Union. Academic Freedom and Civil Liberties of Students in Colleges and Universities, rev. ed. New York: American Civil Liberties Union, 1970. 47 p.

    Revision of its 1961 handbook. Useful outline and guidelines on major issues.

55. American Council on Education. Campus Tensions: Analysis and Recommendations. Washington, D.C.: American Council on Education, 1970. 61 p.

    Report of Special Committee on Campus Tensions, Sol M. Linowitz, chairman.

56. Fischer, Thomas C. Due Process in the Student-Institutional Relationship. Washington, D.C.: American Association of State Colleges and Universities, 1970. 37 p.

57. Harmes, Herman Edward. Quo Vadis, in Loco Parentis: A History of the Concept of In Loco Parentis in American Education. Gainesville, Florida: University of Florida, Institute of Higher Education, 1970. vi, 48 p.

*58. Nussbaum, Michael. Student Legal Rights: What They Are and How to Protect Them. New York: Harper and Row, 1970. viii, 160 p.

    Practical guidelines by the general counsel to the United States National Student Association.

59. The Report of the President's Commission on Campus Unrest. Washington, D.C.: U.S. Government Printing Office, 1970. x, 537 p.

    The Commission, headed by William W. Scranton, covered student protest of the 1960's, with special reports on Kent State and Jackson State and recommendations.

60. Sims, O. Suthern, Jr., ed. New Directions in Campus Law Enforcement: A Handbook for Administrators. Athens, Georgia: University of Georgia, Institute of Higher Education, 1970. 79 p.

*61. Young, Douglas Parker, ed. The Legal Aspects of Student Dissent and Discipline in Higher Education, rev. ed. Athens, Georgia: University of Georgia, Institute of Higher Education, 1970. 63 p.

1971

62. Brubacher, John S. The Courts and Higher Education. San Francisco: Jossey-Bass, 1971. xv, 150 p.

Brief account of some cases relating to student and faculty affairs, administration, and academic program, and a sample of torts.

*63. Carnegie Commission on Higher Education. Dissent and Disruption: Proposals for Consideration by the Campus, A Report and Recommendations. New York: McGraw-Hill, 1971. viii, 309 p.

*64. Holmes, Grace W., ed. Law and Discipline on Campus. Ann Arbor, Michigan: Institute of Continuing Legal Education, 1971. xviii, 381 p.

The standard work. See the 1969 volume edited by Grace Holmes. Contents: Robben W. Fleming, "Introductory Remarks," 1-3; Part I: "Campus Tensions: Challenge and Responsibility": Eugene B. Power, "The Governing Board," 7-12; Robert B. Zumwinkle, "An Administrator's View," 13-20; Robert L. Knauss, "The Faculty," 21-26; David Kessler, "The Students," 27-32; James G. Boyle, "The Office of the Students' Attorney: A New Development," 33-40; "Questions and Answers," 41-48; Part II: "Administrative Discipline": Theodore J. St. Antoine, "The Administrative Tribunal," 51-66; Myzell Sowell, "The Independent Hearing Examiner: A Case History," 67-70; Paul D. Carrington, "On Civilizing University Discipline," 71-90; "Questions and Answers": 91-94; Part III: "Law Enforcement in Crisis": Paul A. Brest, "Intelligence Gathering on the Campus," 97-106; Walter W. Stevens, "The Police," 107-114; John P. Holloway, "Injunctive Orders," 115-130; "Questions and Answers," 131-135; Part IV: "The Aftermath of Crisis": John Holt Myers, "Political Reactions," 139-148; Karl J. Bemesderfer, "The Legislators Strike Back," 149-158; Robert M. O'Neil, "The Litigator's Response," 159-172; Richard M. Goodman, "A Trial Lawyer's View of Lawsuits against Schools," 173-184; Carroll L. Wagner, Jr., "The Administrator's Dilemma," 185-194; "Questions and Answers," 195-203. Appendixes I-X, 209-356, on "Rights, Responsibilities, and Rules," "New Answers--Actual and Proposed," and "The Political Response to Campus Disruption" (American Bar Association Committee Report; Statement of American Association of State Colleges and Universities; Examples of Campus Rules, Disciplinary Structures, and Procedures, Arranged by Subject; University of Texas, Office of Students' Attorney; University of Michigan, Legal Aid Clinic for Students; Civil Sanctions: A Model University Bylaw; Temporary Restraining Order with Self-executing Clause; Federal Law Denying Financial Assistance

to Disrupters; American Council on Education, Guidelines on Questions Relating to Tax Exemption and Political Activities; A Compendium of State Legislation in Response to Campus Disorder). Bibliography, 357-364; Index, 365-381.

65. La Morte, Michael W., Harold W. Gentry, and D. Parker Young. Students' Legal Rights and Responsibilities. Cincinnati, Ohio: W.H. Anderson, 1971. xi, 241 p.

66. Mills, Joseph L. The Legal Rights of College Students and Administrators: A Handbook. Washington, D.C.: Lerner Law Book Publishing Co., 1971. vii, 177 p.

*67. Sandman, Peter M. Students and the Law. New York: Collier Books, 1971. xiv, 241 p.

In popular style, the author discusses student rights issues for both high school and college students, including summaries of numerous cases.

68. Young, Douglas Parker, ed. Conference on Higher Education: The Law and Individual Rights and Responsibilities. Athens, Georgia: University of Georgia, Institute of Higher Education, 1971. viii, 51 p.

1972

69. Alexander, Kern, and Erwin S. Solomon. College and University Law. Charlottesville, Virginia: Michie, 1972. xxvi, 776 p.

A text and casebook for students and administrators.

*70. Chambers, Merritt M. The Colleges and the Courts: The Developing Law of the Student and the College. Danville, Illinois: Interstate, 1972. xvix, 316 p.

This is seventh in a series of volumes by the same title but giving information and interpretations on various aspects of college law, begun in 1936. See Chambers' 1973 book on faculty and staff. Covered: obligation of divorced parents to pay college expenses, admission as a student, progress in racial desegragation, exclusion for academic reasons, conferring degrees, tuition fees and other charges, differential fees, financial aids, facets of student life, dormitory residents, unreasonable searches and seizures, confidentiality of records, torts against students, freedom of speech and assembly, speaker bans, student organizations, student press, due process in disciplinary proceedings, disciplinary rules, state statutes as applied to campus disruptions, use of injunctions and other judicial orders, selective service.

71. Gelber, Seymour. The Role of Campus Security in the College Setting. Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, 1972. 209 p.

72. O'Hara, William T., and John G. Hill, Jr. The Student, the College, the Law. New York: Teacher's College Press, 1972.

73. Ratliff, Richard C. Constitutional Rights of College Students: A Study in Case Law. Metuchen, N.J.: Scarecrow Press, 1972. iv, 260 p.

A 1970 University of Oklahoma Ph.D. dissertation.

1973

*74. Cazier, Stanford. Student Discipline Systems in Higher Education. Washington, D.C.: American Association for Higher Education, 1973. 47 p.

Research Report No. 7, prepared by the ERIC Clearinghouse on Higher Education. Contents: the Dixon case, rationale for discipline codes, substantive and procedural due process, bibliography.

75. Chambers, Merritt M. The Colleges and the Courts: Faculty and Staff Before the Bench. Danville, Illinois: Interstate, 1973. xxii, 260 p.

See also his 1972 book. Covered: inception of the contract, termination of non-tenure contracts, termination of the contracts of probationary faculty members, the Roth and Sindermann decisions of June 29, 1972, tenure and promotion, compensation issues, discharge for cause, suspension, resignation, retirement, discrimination, freedom of speech, expression, assembly, petition, loyalty oaths, freedom of association, including collective negotiations, and provisions regarding non-academic staff and regarding the president, administrative staff and board members.

1974

*76. Blackwell, Thomas E. The College Law Digest 1935-1970. Washington, D.C.: National Association of College and University Attorneys, 1974. xi, 255 p.

This is the basis from which the NACUA bimonthly College Law Digest has continued to digest cases under Blackwell's editorship.

B. Articles

1968

*77. Denver Law Journal 45, no. 4 (Special 1968), 497-678: Symposium: "Legal Aspects of Student-Institutional Relationships."

"Introduction," 497-501; Logan Wilson, "Campus Freedom and Order," 502-510; William M. Beaney, "Students, Higher Education, and the Law," 511-524, and comments by Edward Schwartz, Christopher H. Munch

and Stephen D. McClennan, 525-544; Terry F. Lunsford, "Who Are Members of the University Community?" 545-557; Robert B. McKay, "The Student as Private Citizen," 558-570, and comments by Stephen Wright, Robert Lutz and Paul H. Cashman, 571-581; William W. Van Alstyne, "The Student as University Resident," 582-613, and comments by C. Peter Magrath, Rachel Scott and Roy Lucas, 614-642; William Cohen, "The Private-Public Legal Aspects of Institutions of Higher Education," 643-648; Philip Monypenny, "The Student as a Student," 649-662, and comments by Neal R. Stamp, Robert S. Powell, Jr. and Earle W. Clifford, 663-678.

78. Henderson, Algo D. "The Administrator/Student Conflict." Administrative Law Review 21, no. 1 (November 1968), 65-77.

    Presents group participative model versus participatory democracy or traditional bureaucracy, in view of the current shift from "in loco parentis" to identification of student rights with civil liberties and in view of the validity of many student concerns.

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117. Kovacevich, George J. Comment--"Student Unrest in a Legal Perspective: Focus on San Francisco State College." University of San Francisco Law Review 4, no. 2 (April 1970), 255-283.

118. Maxwell, Richard. Comment--"Rules of Evidence in Disciplinary Hearings in State-Supported Universities." Texas Tech Law Review 1, no. 2 (Spring 1970), 357-365.

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Change from in loco parentis doctrine, from Dixon v. Alabama State Board of Education (1961) to Tinker v. Des Moines Independent Community School District (1969).

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Survey of relevant cases and recommendation of due process and equal protection standards under the fourteenth amendment.

*133. Beaney, William M., and Jonathan C. S. Cox. "Fairness in University Disciplinary Proceedings." Case Western Reserve Law Review 22, no. 3 (April 1971), 390-407.

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*135. Blackwell, Thomas E. "Evolution and Development of College Law." Cleveland State Law Review 20, no. 1 (January 1971), 95-110; "College Law: 1970-1971: Second of a Series of Surveys," id., no. 3 (September 1971), 454-464.

A continuation of coverage begun in his 1961 and 1974 books, listed above (##49, 76).

136. Brakebill, Marwin B. Comment--"Suspension of Student Pending Disciplinary Hearing." Texas Tech Law Review 2, no. 2 (Spring 1971), 271-279.

137. Brittain, Kerry R. Comment--"Colleges and Universities: The Demise of in loco parentis." Land and Water Law Review 6, no. 2 (1971), 715-741.

*138. Carrington, Paul D. "Civilizing University Discipline." Michigan Law Review 69, no. 3 (January 1971), 393-418.

A basic essay on many of the key issues.

139. Caruso, Lawrence R. "Privacy of Students and Confidentiality of Student Records." Case Western Reserve Law Review 22, no. 3 (April 1971), 379-389.

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Jorge I. Dominguez, "To Reign or to Rule: A Choice for University Boards of Trustees," 375-405; Robert B. Yegge, "If You Trust the Beneficiaries, You Don't Need Trustees," 406-416; John G. Hill, Jr., "The Fourteenth Amendment and the Student--Academic Due Process," 417-432; Robert L. Bard, "Protecting the Academic Community Against Internal Assault," 433-465; Gary R. Weaver, "All Is Not Quiet on the Academic Front," 466-478.

141. Dean, William J. Note--"Private College Discipline and Due Process Afforded to Students." South Carolina Law Review 23, no. 1 (1971), 175-181.

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143. Drucker, Christine M. Comment--"School Regulations and the Rule Making Power of the University." St. Louis University Law Journal 15, no. 3 (Spring 1971), 467-490.

Able discussion of Esteban v. Central Missouri State College (1969).

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*154. Pettigrew, Harry W. "Due Process Comes to the Tax-Supported Campus." Cleveland State Law Review 20, no. 1 (January 1971), 111-124.

Ohio University professor of business law examines the due process concept and sets forth procedural guidelines regarding student discipline.

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157. Rowland, Ronald L. Note--"Colleges and Universities--Effect of House Bill No. 1219 on Controlling Campus Disorders." Ohio State Law Journal 32, no. 1 (Winter 1971), 198-207.

Discussion of three sections in the Ohio Revised Code.

*158. Villarreal, Diego L. "The Students' Constitutional Rights and the University Disciplinary Committee." North Carolina Central Law Journal 3, no. 1 (Fall 1971), 53-74.

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160. Berman, David R. "Law and Order on Campus: An Analysis of the Role and Problems of the Security Police." Journal of Urban Law 49, no. 3 (February 1972), 513-531.

*161. Epstein, Norman L. "The Use of Hearing Officers in Student Disciplinary Proceedings." College Counsel 7, no. 1 (1972), 354-401.

The California State Colleges procedures, text and explanation, with related California Administrative Code Sections, and related memoranda from Epstein as General Counsel.

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164. Note--"Statutory Control of Campus Disorders in Washington: Effect of R.C.W. §§28B.10.570-.573 (1970)." Washington Law Review 47, no. 3 (May 1972), 501-510.

165. O'Toole, George A., Jr. "Summary Suspension of Students Pending a Disciplinary Hearing: How Much Process is Due?" Journal of Law and Education 1, no. 3 (July 1972), 383-410.

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Examination of legislative responses. See his 1971 article (#157).

167. Stanton, Charles M. "The Development of a Legal Definition of 'Due Process' in Student Disciplinary Proceedings." College Counsel 7, no. 1 (1972), 540-466.

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